

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MB Docket No.04-219
FM Broadcast Stations.)	RM-10986
(Evergreen, Alabama, and Shalimar, Florida))	

REPORT AND ORDER

Adopted: March 23, 2005**Released: March 25, 2005**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making* in this proceeding.¹ Gulf Coast Broadcasting Company, Inc. ("Gulf Coast") and Quantum of Ft. Walton Beach License Company, LLC ("Quantum") filed Comments. Quantum filed Reply Comments. Gulf Coast filed a Supplement to Comments and Reply Comments. For the reasons discussed below, we are modifying the license of Station WPGG, Channel 227C1, Evergreen, Alabama, to specify operation on Channel 227C2 at Shalimar, Florida.

Background

2. At the request of Gulf Coast, licensee of Station WPGG, Channel 227C1, Evergreen, Alabama, the *Notice* proposed the substitution of Channel 227C2 for Channel 227C1 at Evergreen, reallocation of Channel 227C2 to Shalimar, Florida, and modification of the Station WPGG license to specify operation on Channel 227C2 at Shalimar. The *Notice* was pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.² *Community of License* requires that any reallocation proposal result in a preferential arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³ In this situation, the reallocation would result in Shalimar (with a population of 718 persons according to the 2000 U.S. Census) having its first local service while Evergreen (with a population of 3,630 persons according to the 2000 U.S. Census) will continue to receive local service from AM Station WJLK. The *Notice* required Gulf Coast to submit a showing pursuant to *Faye and Richard Tuck* to demonstrate that Shalimar is independent of the Fort Walton

¹ *Evergreen, Alabama, and Shalimar, Florida*, 19 FCC Rcd 10208 (MB 2004).

² See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Community of License"), 4 FCC Rcd 4870 (1989), *recon. granted in part* 5 FCC Rcd 7094 (1990).

³ 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

Urbanized Area and entitled to consideration as a first local service.⁴ This is because Shalimar is located within the Fort Walton Urbanized Area.

3. In its Opposition Comments, Quantum argues that the reallocation of Channel 227C2 to Shalimar is "contrary to the public interest" in that it will remove the sole FM service from Evergreen and result in a withdrawal of service from 97,195 persons. Quantum also contends that Shalimar is dependent upon the Fort Walton Urbanized Area and not entitled to consideration as a first local service.

4. We are substituting Channel 227C2 for Channel 227C1 at Evergreen, Alabama, reallocating Channel 227C2 to Shalimar, Florida, and are modifying the Station WPGG license to specify operation on Channel 227C2 at Shalimar.⁵ This reallocation will result in a preferential arrangement of allotments as required by the Commission in *Modification of FM and TV Authorizations to Specify a New Community of License* ("Community of License").⁶ In reaching this determination, we compared the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁷ This reallocation will provide a first local service to Shalimar while Evergreen will continue to receive local service from AM Station WJJK. This will result in a net service gain of 62,865 persons. Except for 1,400 persons receiving only four aural services, based upon our own calculation, the population losing service will continue to be served by more than five aural services.⁸

5. We recognize that Shalimar is located in the Fort Walton Urbanized Area. In this regard, we are concerned with the potential migration of stations from lesser-served rural areas to well-served urban areas. For this reason, we will not blindly apply a first local service preference when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. In making such a determination, we apply existing precedents.⁹ In essence, we consider the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban and central city, and, most important of all, the independence of the suburban community.

6. The first area of inquiry concerns the extent a station will provide service to an entire Urbanized Area. As a Class C2 facility, Station WPGG will invariably serve a large area and a significant portion of the Fort Walton Urbanized Area. Because Station WPGG is a Class C2 facility,

⁴ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

⁵ The reference coordinates for the Channel 227C2 allotment at Shalimar, Florida, are 30-23-36 and 86-29-45.

⁶ *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), recon. 5 FCC Rcd 7094 (1990).

⁷ *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

⁸ The Commission has considered five or more reception services to be "abundant." *Family Broadcasting Group*, 53 RR 2d 662 (Rev. Bd. 1983), rev. denied FCC 83-559 (Comm'n Nov. 29, 1983); see also *LaGrange and Rollingwood, Texas*, 10 FCC Rcd 3337 (1995).

⁹ See e.g. *Huntington Broadcasting Co. v. FCC*, 192 F. 2d 33 (D.C. Cir. 1951); *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

this coverage does not support a conclusion that Shalimar is not entitled to consideration as a first local service. Our second area of inquiry involves the relative populations of Shalimar and Fort Walton. The 2000 Shalimar population of 718 persons is than four percent of the 19,973 person population of Fort Walton. However, a percentage of less than one percent has not precluded favorable consideration as a first local service.¹⁰ Our third, and most important, inquiry is the independence of the suburban community. In *Faye and Richard Tuck*, the Commission set forth eight factors in assessing the independence of a suburban community.¹¹ We will evaluate the Shalimar reallocation proposal using each of these factors. As discussed below, a majority of the factors support a determination that Shalimar is independent of the Fort Walton Urbanized Area and entitled to consideration as a first local service.

8. The first factor is the work patterns of the Shalimar residents. In this regard, Quantum notes that the Shalimar workforce consists of 363 people and that Shalimar is a "net importer of workers" due to the fact that a majority of the Shalimar residents are retired. While there is no data on the percentage of Shalimar residents who work in Shalimar, we do note that data from the 200 U. S. Census indicates that the mean commuting time for Shalimar workers is 16.3 minutes. From this, we conclude that a significant number of Shalimar residents work in or very near Shalimar and that there are significant employment opportunities for these residents who would wish to work in Shalimar. For these reasons, we find that the residents of Shalimar do not rely on the Fort Walton Urbanized Area for employment. This is sufficient to support a favorable finding on this factor.¹² In regard to the second factor, whether the smaller community has its own local newspaper or other media providing news and advertising for Shalimar, we cannot make a favorable finding.

9. The third factor, perception of community leaders and residents, and the fourth factor, local government and elected officials, clearly support a determination concerning the independence of Shalimar. Gulf Coast submitted a letter from the Shalimar Town Manager referring to the "strong sense of community." Shalimar, incorporated in 1944, is governed by a mayor and four commissioners. Shalimar also has a Special Projects Commissioner, a Finance and Administration Commissioner, a Town Attorney, a Town Manager, a Deputy Town Clerk, a Police Chief and a Maintenance Supervisor. We also make a favorable finding under the fifth factor because Shalimar has its own post office and zip

¹⁰ See *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (MMB 1996).

¹¹ The Commission set forth the following eight factors: (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own local telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as a police, fire protection, schools, and libraries. We have considered a community as independent when a majority of these factors demonstrate that the community is distinct from the urbanized area. *Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (MMB 1996); *Jupiter and Hobe Sound, Florida*, 12 FCC Rcd 3570 (MMB 1997).

¹² See *Anniston and Ashland, Alabama, and College Park, Covington, Milledgeville and Social Circle, Georgia*, 16 FCC Rcd 3411 (MMB 2001) (16% of workforce employed in community sufficient to support a favorable finding on this factor).

code (32579).

10. We are making a favorable finding under the sixth factor regarding commercial establishments, health facilities and transportation system. Gulf Coast has identified numerous local businesses, medical offices and a local bus service. We are unable to make a favorable finding on the seventh factor because it appears that Fort Walton and Shalimar are part of the same advertising market. Finally, we are unable to make favorable finding regarding the eighth factor, the extent to which Shalimar relies on the larger metropolitan area for municipal services. While Shalimar does have a Police Chief, two town parks and the Shalimar library located outside the town boundaries, a majority of municipal services are not provided by the town of Shalimar.

11. The Commission will send a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

12. Accordingly, pursuant to authority contained in Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 204(b) and 0.283 of the Commission's rules, IT IS ORDERED, That effective May 9, 2005, the Table of FM Allotments, Section 73.202(b) of the Commission's rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Evergreen, Alabama	-----
Shalimar, Florida	227C2

13 IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Gulf Coast Broadcasting, Inc. for Station WPGG, Channel 227C1, Evergreen, Alabama, IS MODIFIED to specify operation on Channel 227C2 at Shalimar, Florida, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall file a minor change application for construction permit (FCC Form 301) specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules;
- (c) Nothing contained herein shall be construed to authorize a change in transmitter site or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's rules, unless the proposed facilities are categorically excluded from environmental processing.

14. Pursuant to Sections 1.1104(1)(k) and (2)(k) of the Commission's rules, any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rulemaking fee when filing the application to implement the change in community of license and/or upgrade. As a result of this proceeding, Gulf Coast Broadcasting, Inc. is required to submit a rulemaking fee in addition to the fee required for the application to affect the change in community of license

15. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

16. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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Media Bureau